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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8536 of 2006

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Savitri Devi, widow of Late Naresh Prasad Singh, resident of village – Jamalpur (Bigha), P.O. Athmal Gola, P.S. – Athamal Gola, District-Patna.

.... Petitioner

Versus

1. The Bihar State Food & Civil Supplies Corporation Ltd., Sone Bhavan, Birchand Patel Path, Patna through the Chairman-cum-Managing Director.
2. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Sone Bhavan, Birchand Patel Path, Patna.
3. The Chief of Claims, Bihar State Food & Civil Supplies Corporation Ltd., Sone Bhavan, Birchand Patel Path, Patna.

.... Respondents

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For the Petitioner : Dr. Umashankar Prasad, Sr. Advocate with
Mr. Kamala Kant Tiwary, Advocate.

For the Respondents : Mr. R.S.Pradhan, Sr. Advocate with
Mr. Amrendra Narayan Rai, Advocate.

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P R E S E N T : HONOURABLE MR. JUSTICE S.N. HUSSAIN

ORDER

12 10-09-2012 This writ petition has been filed by the original petitioner for the following reliefs:-

(i) For quashing the punishment order dated 01.10.2005 passed by respondent no.2 through memo no.8130 as contained in Annexure-2 whereby held guilty to this petitioner in departmental proceeding and passed an order of recovery from this petitioner of Rs.11,60,377.88 which has been calculated @ 18% on the amount of Rs.66,785.00 only by way of forfeiting the amount of gratuity and earned leave and for adjustment of rest amount has taken decision to lodge civil as well as criminal case that is quite illegal that too by initiating a proceeding even after retirement of this petitioner from his service of the corporation.

(ii) Further prayer is quashing the entire

departmental proceeding initiated against this petitioner appertaining to the charge-memo because the charge memo is vague and the proceeding which is in question has been initiated after retirement of this petitioner that is beyond jurisdiction of the corporation.

(iii) Further prayer is for a direction in the name of respondent to refund the entire amount which has been recovered from this petitioner prior to conclusion of departmental proceeding or during the pendency of departmental proceeding because recovery against the alleged charges prior to finalization of enquiry is arbitrary and unfair.

(iv) For any other relief (s) for which the petitioner is found entitled.

2. The claim of the original petitioner is that he was an employee of the Bihar State Food & Civil Supplies Corporation Limited (hereinafter referred to as 'the Corporation' for the sake of brevity) and superannuated from his service of the Corporation as Deputy Manager on 31.12.2003 and after his superannuation the respondent authority framed charges on 09.01.2004 contemplating departmental proceeding against the original petitioner. The charges were as follows:-

(i) The petitioner had defalcated heavy amount while posted at Hazaribagh, Vaishali, Madhubani and Hazaribagh totally amounting to Rs.4, 36, 457.70.

(ii) The petitioner did not reply to the show-cause notice given by the authorities on 17.11.2003 which amounted to disobedience.

(iii) According to report that after receipt of Rs.3,69,672.00 still an amount of Rs.66,785.00 and 18% simple interest is yet to be recovered and if any amount report comes from Munger and other districts, it will be also added.

(iv) The aforesaid defalcated amount along with 18% simple interest is totally amounting to Rs.10,53,284.00 is recoverable till March, 2003.

3. Learned counsel for the petitioner stated that interest is not chargeable on the shortages already realised as the claim was for the period 1982-1991 and no enquiry was concluded by the authorities nor any copy of the report was given to the original petitioner and in any view of the matter after retirement there cannot be any proceeding against the employee of the Corporation.

4. Learned counsel for the petitioner submitted that Rule 43 (b) of the Bihar Pension Rule is not applicable in the case of the Corporation as has already been decided by Patna High Court vide order dated 14.05.2010 passed in CWJC No.7796 of 2010. He further averred that the interest is not chargeable from the employee of the Corporation as has been decided by Jharkhand High Court in **W.P. No. 2180 of 2003 (Durga Prasad Sinha vs. State of Bihar & Ors.)**; **L.P.A. No.38 of 2005 (Bihar State Food & Civil Supplies**

Corporation & Ors. vs. Durga Prasad Sinha & Ors.); **W.P. No.2478 of 2005 (Binit Kumar & Anr. vs. Bihar State Food & Civil Supplies Corporation Ltd. & Anr.)**; **L.P.A. No. 283 of 2010 (Bihar State Food & Civil Supplies Corporation Ltd. & Anr. vs. Binit Kumar**); and by the Apex Court in **Civil Appeal No. 3504 of 2007** (**Bihar State Food & Civil Supplies Corporation vs. Durga Prasad Sinha**) as well as by Patna High Court in **CWJC No.7796 of 2010** (**Rama Kant Jha vs. The Bihar State Food and Civil Supplies Corporation Limited & Ors.)**. In the said circumstances, learned counsel for the petitioner argued that the impugned order of the authority concerned is illegal, arbitrary and perverse and is fit to be quashed.

5. On the other hand, learned counsel for the respondents submitted that huge amount was defalcated by the original petitioner, some of which was recovered and some of which remained to be paid and hence order dated 30.09.2005 was passed and in that view of the matter the charging of interest was legal and necessary. It was also submitted that decisions relied upon by learned counsel for the petitioner are not attracted in the instant case as departmental proceeding was not initiated for defalcation. In this connection he relied upon paragraph-5 of

the order of the Apex court passed on 24.11.2009 in Civil Appeal No.3504 of 2007.

6. Learned counsel for the respondents averred that the interest was charged from the original petitioner as per the decision of the Board of Directors of the Corporation dated 24.11.2001, which was produced in Court by learned counsel for the Board. He relied upon a decision of a Bench of this Court dated 16.07.2004 passed in CWJC No.6823 of 2004 **(Lala Nand Kumar vs. Bihar State Food & Civil Supplies Corporation Ltd. & Ors.),** which was with respect to the payment of interest and also relied upon a decision of a Division Bench of this Court in case of **Subhash Chandra Singh vs. The Bihar State Food & Civil Supply Corporation Ltd. & Ors., reported in 2010 (2) P.L.J.R. 342** in which the interest charges were reduced from 18% to 11%.

7. Learned counsel for the respondents claimed that defalcated amount has been deposited by the original petitioner, hence the original petitioner had admitted the same by paying it and thus he was liable to pay interest also. He argued that there was no merit in this writ petition, which was fit to be dismissed.

8. Considering the entire facts and circumstances of this case, it is quite apparent that the allegation of defalcation

against the original petitioner is with respect to the amounts of districts of Hazaribagh, Vaishali, Madhubani, Hazaribagh totally amounting to Rs.4,36,457.70. So far the apprehension of the authorities that further amounts may be recovered from the original petitioner, if similar reports are received from other districts including Munger is concerned, nothing has come on record to show that any other amount has been found recoverable from the original petitioner. The respondents authorities have admitted that they had received Rs.3,69,672.00 before the filing of this writ petition and only Rs.66,785.00 of the principal amount remained to be recovered. Learned counsel for the petitioner has also stated that the said remaining amount has also been recovered from the original petitioner, but the respondents deny the said claim as no document has been produced by the petitioner with respect thereto.

9. From the respective claim of the parties it is quite apparent that admittedly there were some shortages from the aforesaid four places during the period of 1982-1991 and most of the amounts have been voluntarily paid by the original petitioner or as has been recovered from him and hence there is no case of misappropriation, specially when the original petitioner had never refused to pay the same.

10. Admittedly the original petitioner had retired on 31.12.2003 and only thereafter the proceeding was started on 09.01.2004 with respect to shortages for the period 1982-1991, whereafter the impugned order was passed on 30.09.2005 against which this writ petition was filed and during the pendency of this writ petition the original petitioner died on 24.06.2012, whereafter his heir has been substituted in this writ petition.

11. So far the question of interest is concerned, both the parties have relied upon several decisions of Patna High Court, Jharkhand High Court and the Apex Court most of which are not applicable to the facts and circumstances of this case but two decisions cited by learned counsel for the respondents, namely in case of **Subhash Chandra Singh (supra)** and **Lala Nand Kumar (supra)** have to be considered in the instant case along with other decisions, including the decision of the Apex Court cited by learned counsel for the petitioner in that regard. In case of **Subhash Chandra Singh (supra**) a Division Bench of this Court had held that when the act committed by the concerned employee was grossly dishonest and negligent to the effect that he was not fit to be retained in service, there is no place for generosity or misplaced sympathy on the part of

judicial forums and hence there should not be any interference with quantum of punishment and in that case the interest was directed to be recovered, but the rate of interest was reduced from 18% to 11% per annum.

12. In case of **Lala Nand Kumar (supra)** a Bench of this Court had held that so long as there was right to recover the losses/damages suffered by the respondents, they were certainly entitled to claim the interest. Considering the said decisions, it is quite apparent that recovery of interest is not a mandatory provision and it can be varied depending upon the respective facts and circumstances and the nature of the acts committed by the employee against whom order has been passed.

13. The Apex Court vide order dated 24.11.2009 passed in Civil Appeal No.3504 of 2007 had specially held that when the proceeding of claim was initiated after the retirement of the employee and that too without any opportunity to show-cause, merely on the basis of order of the Claims Committee the respondent cannot be held liable for loss/misappropriation with interest. Hence it was held that High Court was justified in holding that retiral benefits of the employee cannot be withheld.

14. A Bench of Jharkhand High Court vide order

dated 15.12.2004 disposed of W.P. No.2180 of 2003 holding that in a proceeding started after the retirement of the petitioner claiming interest was wholly illegal and arbitrary and in such circumstances respondents shall not be held entitled to have any interest as claimed by them. This order of the Single Bench was affirmed by the Division Bench of the Jharkhand High Court vide order dated 03.01.2006 passed in L.P.A. No.38 of 2005. In another case bearing W.P. No.2478 of 2005 a Bench of Jharkhand High Court vide order dated 21.05.2010 held similarly and the said order was affirmed by a Division Bench of that Court vide order dated 22.11.2010 passed in L.P.A. No.283 of 2010.

15. The instant case is different from the case laws relied upon by learned counsel for the respondents, whereas it is similar to the case laws relied upon by learned counsel for the petitioner, specially when the proceeding had been initiated against the original petitioner after his retirement. Furthermore, the enquiry report was also not given to the original petitioner, hence he had no opportunity to file his show-cause properly before the disciplinary authority. Furthermore, definitely there were some shortages but the original petitioner never objected to it and allowed it to be recovered and hence the allegation of

defalcation is not clear. Furthermore the original petitioner has died and his heir, who was depending upon him, has been impleaded.

16. In the said circumstances, this writ petition is allowed in part by quashing the impugned order passed against the original petitioner so far interest is concerned, but so far the other part with regard to recovery of shortages is concerned, if the entire amounts of shortages, namely Rs.4,36,457.70 have not yet been recovered, the authorities concerned will be at liberty to realise the balance amount of shortages from the petitioner, if it has not yet been recovered.

(S.N. Hussain, J)

Harish/-